IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 370 of 2000.

Judgement reserved on: 31.10.2007.

Date of decision: 30.11.2007.

State of H.P. ….. **Appellant.**

Vs.

Devi Singh …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. Virender Kumar Verma, Addl. Advocate General.**

For the Respondents : **Mr. Ajay Sharma, Advocate.**

Kuldip Singh, Judge.

The State has filed this appeal against judgement, dated 6.3.2000, passed by learned Additional Chief Judicial Magistrate, Dehra in Criminal Case No. 61-II/91, acquitting the respondent, under Sections 323, 324 and 325 IPC.

2. The prosecution case in brief is that complainant PW 1 Smt. Shareshta Devi alongwith her sister-in-law PW 2 Sunita Devi on 10.4.1991 had gone in their fields at village Dhawala to collect fodder for their cattle. They were returning to their home, the respondent who is having old boundary dispute with the family of the complainant, came there at 6.30 p.m., he abused PW 1 and PW 2 for

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Whether the reporters of the local papers may be allowed to see the Judgment?

uprooting grass from his fields. PW 1 told him that she was coming from her own fields, the respondent pushed her as a result of which she fell down alongwith her bundle of grass. The respondent took out the sickle from her bundle and hit her with the same on her left wrist. On this, PW 1 and PW 2 raised alarm and on hearing this, Dilbagh Singh and PW 3 Gorkhu Ram came there, but respondent again gave Danda blows to PW 1 and PW 2 in the presence of Dilbagh Singh and Gorkhu Ram. After this PW 1 lodged a report at Police Station, Dehra and on that basis FIR No. 17/91 was registered. On completion of investigation, challan was put up against the respondent and he was charged, under Sections 323, 324 and 325 IPC, to which he pleaded not guilty and claimed trial. The prosecution has examined six witnesses. The statement of respondent was recorded under Section 313 Cr.P.C., he did not examine any witness in defence. The learned Additional Chief Judicial Magistrate acquitted the respondent, hence State is in appeal.

3. I have heard the learned Additional Advocate General for the State, learned counsel for the respondent and gone through the record. The learned Additional Advocate General has submitted that prosecution has proved the case. PW 1 and PW 2, who were given beatings by the respondent have proved the prosecution case, which is supported by medical evidence as well as the statement of PW 3 independent witness. There is no reason to disbelieve the statements of PW 1 and PW 2. The learned counsel for the respondent has supported the impugned judgement.

4. PW 1 Shareshta Devi has stated that on 10.4.1991she alongwith PW 2 Sunita Devi had gone to collect fodder from their own fields. At about 6.30 p.m. they were returning home, respondent met them on the way. He abused them when they reached his fields. He asked them from where they have brought the grass. They had shown him the place from where they cut the grass. When they were again bringing the grass, the respondent brought down her bundle of grass and pushed her. They lifted the bundles but he again pushed and bundles fell down. He took out sickle from her bundle and attacked her with that sickle, as a result of which she received cut injury on her left arm. PW 2 raised alarm. On this, Gorkhu and Dilbagh Singh came on the spot. In their presence, respondent gave them beatings with Danda. She reported the matter to the police and an FIR Ex. PW 1/A was registered. She was medically examined and MLC mark-X bears her signature at point Ex. PW 1/B. She identified her shirt Ex. P-2 and sickle Ex. P-3. In her cross examination, she has admitted that there is a dispute of respondent with her family. Dilbagh Singh reached first and Gorkhu came when respondent was giving beatings. She denied that respondent did not give any beatings to her.

5. PW 2 Sunita Devi has stated that on 10.4.1991, when they had gone in their fields and were returning home at about 6.30 p.m., the respondent met them on the way and he started abusing them. He pushed PW 1 and her bundle of grass fell down. He took out sickle from the bundle of PW 1 and gave sickle blow on her left wrist. They raised alarm, Gorkhu and Bura reached there. The

respondent was having Danda in his hand and he gave beatings with that Danda to her as well as to PW 1 She received injuries on the arm and leg. She got fracture of arm with Danda blow. She was medically examined. She identified her signature Ex. PW 2/A on MLC mark-Y. In cross examination, she has stated that Dilbagh is also known by name Bura and Gorkhu is their servant. Gorkhu reached first and nobody else came to the spot.

6. PW 3 Gorkhu has stated that about four years ago at 6.30 p.m., he and Dilbagh Singh were in the fields, they heard cries "Bachao- Bachao" and they rushed to the spot. They saw that respondent was beating PW 1 and PW 2 was with her. The respondent gave sickle blow on the hand of PW 1. Respondent gave Danda blows to PW 1 and PW 2. Shareshta Devi suffered injuries on her legs. Sunita suffered injuries on her head, wrist. There were two bundles of grass on the spot. The respondent after giving beatings, ran away from the spot.

7. PW 4 Dr. B.B.Sharma, has stated that on 11.4.1991 he took X-ray of Sunita Devi and report to this effect is Ex. PW 4/B. PW 5 Dr. Suman Sood has proved MLC Ex. PW 5/A of Shareshta Devi as well as MLC Ex. PW 5/B of Sunita Devi. PW 6 Harwant Singh is the Investigating Officer.

8. The perusal of statement of PW 1 Shareshta Devi reveals that she and PW 2 Sunita Devi were abused by respondent when he met them at 6.30 p.m. when they were returning home. The cause for abusing was cutting of grass by PW 1 and PW 2. PW 1 and PW 2 had shown the place to respondent from where they brought

the grass, nothing happened till then. PW 1 has stated that when they had shown the place to respondent from where they had cut the grass and were bringing the grass at that time, respondent pushed her bundle of grass as well as her. Both of them lifted the bundles of grass, but he again pushed the bundles, which fell down. Thereafter respondent took out sickle from the bundle of PW 1 and attacked her with that sickle as a result of which she received cut injuries on her left arm. He gave Danda blows to PW 1 and PW 2 thereafter.

9. PW 2 Sunita Devi has stated that respondent met them on the way and he started abusing them. He pushed PW 1 and her bundle of grass fell down. He took out sickle from the bundle of PW 1 and gave sickle blow on her left wrist. There is contradiction in the statements of PW 1 and PW 2 regarding starting of occurrence. PW 2 has not stated that respondent asked them from where they brought grass and on this they had shown him the place from where they had cut the grass and when they were again bringing the grass at that time respondent gave them beatings. It has come in prosecution evidence that respondent was in the habit of carrying a Danda with him every time and at the time of occurrence he was carrying Danda. It is not believable that when respondent was having Danda with him why he used sickle first for attacking PW 1 and PW 2 and later on Danda also for beating them. PW 3 Gorkhu has stated that when he reached the spot, respondent was beating PW 1. He first of all gave sickle blow on the arm of PW 1. He has not stated from where respondent brought the sickle. He has stated that respondent after giving beatings ran away from the spot but this has not been stated

by PW 1 and PW 2. PW 1 in her cross examination has admitted that there is a dispute of respondent with her family. PW 2 in her cross examination has admitted that Gorkhu is their servant. Dilbagh Singh who came on the spot after hearing the cries has not been examined. The prosecution has not examined any independent witness to support the case of the prosecution. It is not the case of the prosecution that in the near vicinity of the alleged occurrence, there is no abadi of other persons. The most glaring aspect of the case is that in the statement, under Section 313 Cr.P.C. of the respondent, important incriminating material was not put to him which deprived him to explain that incriminating material. The shirt Ex. P-2, sickle Ex. P-3, MLC Ex. PW 5/A of PW 1 Shareshta Devi, MLC Ex. PW 5/B of PW 2 Sunita Devi were not put to him in his statement under Section 313 Cr.P.C. MLC Ex. PW 4/B issued by Dr. B.B.Sharma regarding fracture of Sunita Devi was also put to respondent vaguely and not clearly that as per Ex. PW 4/B fracture was found on the person of Sunita Devi. Ex. PW 1/B and Ex. PW 2/B by terming them as MLCs were put to respondent, whereas PW 1/B is the signature of PW 1 Shareshta Devi on MLC Ex. PW 5/A. Similarly, Ex. PW 2/B is the signature of PW 2 Sunita Devi on MLC Ex. PW 5/B. Thus statement of the respondent, under Section 313 Cr.P.C. has not been recorded properly. The benefit of this lapse will go to the respondent. The alleged occurrence is of 10.4.1991 and already more than sixteen years have passed. In these circumstances, it will not be proper to send back the case for recording the statement of the respondent, under Section 313 Cr.P.C. afresh and give him an opportunity to lead

evidence in defence. The respondent is facing trial and appeal for the last 16 years. The trial Magistrate has already taken a possible view from the material on record and no case for interference has been made out. Hence, the appeal is dismissed.

November 30, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**